IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6541 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SHREE SATYANARAYANBHAI NATHUBHAI ACHARYA

Versus

STATE OF GUJARAT

Appearance:

MR SM SHAH WITH MR PJ YAGNIK for Petitioner

MS. SD TALATI, Asstt. GP for Respondent No. 1

MR VH DESAI for Respondent No. 2 absent.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/02/98

ORAL JUDGEMENT

Petitioner before this Court is a retired employee of the Limdi Municipality the respondent No. 2 herein (hereinafter referred to as "the Municipality").

The petitioner claims the benefit of pension on his retirement.

2. The petitioner was appointed by the Municipality on 20th December, 1939 in the Former State of Limdi. In the year 1948, the State of Limdi merged with the State of Saurashtra. The petitioner was, however, continued in service of the Municipality. In the year 1956, the States were reorganized and the State of Saurashtra merged with the State of Bombay. In the year 1960, the State of Bombay was reorganized and part of the State of Bombay was bifurcated and the State of Gujarat was formed. The Municipality, thus, became part of the State of Gujarat. The petitioner has placed sole reliance on the Government Resolution dated 18th October, 1954 passed by the then State of Saurashtra. Under the said resoslution dated 18th October, 1954, it was resolved that in respect of the covenanting State servants who were serving in the municipalities prior to or at the time of merger of those States with the State of Saurashtra and who continued to serve in the elected municipalities or who retired or died while serving the municipality, payment of pension contribution should be made by the elected municipality concerned. Pensionary liability of those employees would be borne by the Government of Saurashtra. The petitioner claims that he was the servant of the then State of Limdi and was serving in the Municipality. Even after the merger of the State of Limdi with the State of Saurashtra, he continued to serve in the elected municipality. His case is, therefore, covered by the aforesaid resolution of 18th October, 1954 and the State of Saurashtra was duty bound to pay pension to the petitioner on his retirement. He has further submitted that in view of section 115 of the States Reorganization Act, 1956 and section 81 of the Bombay Reorganization Act, 1960, his service conditions are protected and on his retirement, the petitioner is entitled to receive pension from the Government of Gujarat. The petitioner has also averred that some of such employees of the Municipality have been given the benefit of pension and the petitioner is arbitrarily deprived of such benefit.

3. The petition is contested by the Government as well as the Municipality. It is the case of the Government that the service conditions of the servants of the Municipality were governed by the relevant rules and the petitioner is governed by such rules. It is

contended that the petitioner was not the State servant in the former State of Limdi and thus his case cannot be governed by the Government Resolution dated 18th October, 1954. Hence, the petitioner is not entitled to pension as claimed by him. The Municipality has contended that in view of the rules prevalent in the Municipality, the petitioner has been paid the benefit of the Contributory Provident Fund as well as the gratuity and no further amount is due and payable to the petitioner.

4. On 1st October, 1938, the State of Limdi made an order appointing one Ambashankar Vajeshankar as Surveyor. Said order refers to the right of the petitioner to such appointment. However, the appointment was made in favour of said Ambashankar Vajeshankar. Thereafter, on 20th December, 1939, the Managing Committee of the Municipality passed a resoslution and appointed the petitioner in the Municipality. Thus, on perusal of the appointment order dated 20th December, 1939, it does appear that the petitioner was appointed by the Municipality. Hence, in my view, it cannot be said that the petitioner was appointed by the State of Limdi and was serving in the Municipality. The resolution of 18th October, 1954 refers to the municipalities listed in the Appendix attached thereto which were working as State municipalities. The Limdi Municipality has been listed at item 20 in the said Appendix. Hence, it must be held that the Municipality was a State Municipality in the former state of Limdi. However, the responsibility of payment of pension to the servants of the municipalities was taken over by the State of Saurashtra only in respect of those employees who were the State servants and were serving in such municipalities. Hence, in my opinion, not all the employees of the municipalities were entitled to the benefits of the pension from the then State of Saurashtra and from the State of Gujarat as the successor State. It was a condition precedent that the employee must be a State servant of the former covenanting State. From the records of the matter, it does not appear that the petitioner was a servant of the State of Limdi (a covenanting State). He, therefore, cannot avail of the benefit of pension under said resolution of 18th October, 1954.

5. Further, under the Bombay District Municipal Act, 1901, the Municipality adopted the rules which were sanctioned by the State of Saurashtra under its resolution dated 14th February, 1951. (page 54 of the petition). Said Rules are known as the Rules of Limdi Municipality in respect of Provident Fund and Gratuity. Under the said rules, various provisions have been made

in respect of the payment of gratuity and provident fund for the employees of the municipality. Under rule 4.C, compulsory deposit is defined as compulsory deduction made from the salary of the employee and the amount of contribution made by the Municipality and the interest earned on such amount. Rule 5(1) provides that the municipality shall compulsorily deduct 8% from the amount of salary of its employee and the same shall be deposited in the name of such employee. Rule 5(2) provides that every month, the Municipality shall deposit an amount equivalent to deduction made under sub rule (1) from its own fund in the name of the employee. Rule 5(3) provides that the interest on the amount referred to in sub rule (1) and (2) shall be deposited in the name of such employee. Rule 7 provides for payment of such amount accumulated in the name of the employee to such employee on his retirement or termination of service except in the cases enumerated thereunder. On perusal of the aforesaid rules, it is evident that the Municipality had adopted the rules for payment of gratuity and contributory provident fund to its employees. Thus, the employees who have availed of the benefit of contributory provident fund cannot claim the benefit of pension as well.

6. In the present case, the Chief Officer of the Municipality has made an affidavit and has stated that the petitioner was appointed by the Municipality and not by the former State of Limdi. Further, in paragraph 7 of the affidavit, it is stated that the petitioner has been given the benefit of contributory provident fund upon his retirement.

7. It appears that some seven employees of the Municipality were appointed by the former State of Limdi and were continued in the Municipality even after the merger of the State of Limdi with the State of Saurashtra. In view of the resoslution of 18th October, 1954, the Municipality made a contribution to the State of Saurashtra towards the pension of the said State employees. From the affidavits made by the respondents herein, it is apparent that the Said seven persons were the servants of the former State of Limdi and the Municipality made contribution to the State of Saurashtra in respect of the said persons. Hence, said employees were entitled to pension upon their retirement instead of contributory provident fund. Thus, the cases of the said persons stand on entirely a different footing than that of the petitioner. As discussed hereinabove, the petitioner has received benefit of contributory provident fund and his case cannot be compared with the other persons who have received pension in lieu of of the

benefit of contributory provident fund.

8. It appears that in course of his service, the petitioner's service was terminated on account of certain misconduct. The petitioner was, however, reinstated in service pursuant to an award made by the labour court, Rajkot in Reference (LCR) No. 224 of 1975. The factum of the termination of service of the petitioner and his reinstatement in service pursuant to the award made by the labour court are not relevant for the purpose of this petition. No other contention is raised before me.

In view of the above discussion, I hold that the petitioner is not entitled to pension as claimed by him. Petition is, therefore, dismissed. Rule is discharged.

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Vyas